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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/009,990

06/30/2003

Earl Harling

NIDN-73132

6720

36335

7590

10/27/2009

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IP DEPARTMENT 101 CARNEGIE CENTER

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EXAMINER

DOUGLAS, STEVEN O

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

10/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/009,990
Filing Date: June 30, 2003
Appellant(s): HARLING ET AL.

Craig M. Bohlken
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/13/09 appealing from the Office action mailed 6/16/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,297,502	Jaeger	03-1994
4,332,244	Levy et al.	06-1982

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaeger'502 in view of Levy et al. (US 4,332,244).

The Jaeger reference comprises a ventilation system for experimental animals (see Fig. 1) comprising an induction chamber containing a first compartment 10 with a means for the supply and removal of a gaseous substance (see the coaxial arrangement of elements 230 and 165) and a second compartment 5 connected to an inlet 230, wherein the gaseous passes into the second compartment and thence to the inlet (i.e. the escaping gaseous substance coaxially surrounds the inlet and therefore meets the limitation of passing anesthetic to the inlet).

In regard to claim 10, wherein the joining of the first compartment to the second compartment meets the limitation of selective closing of the passage defined by element 165.

In regard to claim 11, wherein the inlet 165 is located in the upper or top right portion of the second compartment and a ventilation hole 34 is located in a lower region thereof for receiving intake air from the nebulizer 35.

However, the Jaeger reference fails to explicitly disclose use of the ventilation system with an anesthetic substance. Attention is further directed to the Levy et al. reference which discloses another ventilation system for experimental animals which utilizes an anesthetic substance in order to facilitate experimental tests and procedures on the experimental animals. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Jaeger device to accommodate an anesthetic (if not already) as taught by Levy et al. in order to allow experimental animals to be anesthetized to facilitate experimental tests and procedures (i.e. including surgical procedures) to be done on the experimental animals.

(10) Response to Argument

In regard to Appellant's argument that Jaeger specifically relates to an inhalation system for supplying gas directly to the respiratory tract of a plurality of experimental animals and not to a ventilation system for use in a surgery suite (see page 5, line 18 through page 6, line 2 of the Appeal Brief), Examiner would like to bring to Appellant's attention that Appellant's argument is more narrow than the scope of the present claims and that the limitation of a "surgery suite" is not present in the instant set of claims.

In regard to Appellant's argument that the part of novelty of the present invention is that it is modified to accommodate smaller animals (see page 6, lines 3-8 of the Appeal Brief), Examiner notes that there are no limitations in the claims with regard to the size of the ventilation system. Additionally, both Jaeger and Levy et al. disclose systems arranged to accommodate small laboratory-type animals (i.e. lab rats).

In regard to Appellant's argument that Jaeger fails to teach, disclose or suggest using the invention for anesthetic purposes (see page 6, lines 9-17), Examiner agrees. However, Appellant is reminded that Examiner has relied upon the teachings of the Levy et al. reference to suggest the use of a system such as Jaeger for anesthetic purposes (see rejection stated above). Furthermore, the present claims are to a system rather than to a method. The issue is whether the prior art system meets the structural limitations of the claims and is capable of functioning as a ventilation system in which animals can be anaesthetized.

In regard to Appellant's argument that Levy only uses masks for delivery of anesthetic gases to lab animals, does not disclose using breathing station compartments that would fill a chamber with gas without the use of masks, is unable to administer liquid anesthetic, and is

unable to deliver precise amounts of gas anesthetics (see page 6, lines 18 through page 7, line 4 of Appeal Brief), it is again brought to Appellant's attention that Appellant argues the rejection as if the teaching reference (i.e. Levy) must anticipate the claims and Appellant is reminded that *Examiner depends on Levy to merely show that the administering of anesthetic to small animals* is readily known. The limitation of the use of breathing station compartments is already disclosed by Jaeger (see rejection stated above). Furthermore, the claims do not require that the system be capable of administer liquid anesthetic or deliver precise amounts of gas anesthetics.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Steven O. Douglas/
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GAU 3771

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/Justine R Yu/
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/Janet C. Baxter/
TC 3700 TQAS